

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec. 599C of Pub. L. 101-513, 104 Stat. 2064, as amended.

2. The heading of subpart I is revised to read as follows:

Subpart I—Limit on Inpatient Hospital Charges, Physician Charges, and FEHB Benefit Payments

3. Section 890.901 is revised to read as follows:

§ 890.901 Purpose.

This subpart identifies the individuals whose charges and FEHB benefit payments for inpatient hospital services and/or physician services may be limited and sets forth the circumstances of the limit.

4. Section 890.902 is amended by revising paragraphs (c) and (d) to read as follows:

§ 890.902 Definition.

* * * * *

(c) Is age 65 or older or becomes age 65 while receiving inpatient hospital services or physician services; and

(d) Is not covered by Medicare part A and/or part B.

5. Section 890.903 is revised to read as follows:

§ 890.903 Covered services.

(a) The limitation on the charges and FEHB benefit payments for inpatient hospital services apply to inpatient hospital services which are:

(1) Covered under both Medicare part A and the retired enrolled individual's FEHB plan; and

(2) Supplied to a retired enrolled individual who does not have Medicare part A; and

(3) Provided by hospital providers who have in force participation agreements with the Secretary of Health and Human Services (HHS) consistent with sections 1814(a) and 1866 of the Social Security Act, and receive Medicare part A payments in accordance with the diagnosis related group (DRG) based prospective payment system (PPS).

(b) The limitation on the charges and FEHB benefit payments for physician

services apply to physician services, (as defined in section 1848(j) of the Social Security Act), which are:

(1) Covered under both Medicare part B and the retired enrolled individual's FEHB plan; and

(2) Supplied to a retired enrolled individual who does not have Medicare part B.

6. Section 890.904 is amended by designating the current paragraph as paragraph (a), amending newly designated paragraph (a) by adding the words "for inpatient hospital services" after the words "FEHB plan's benefit payment", and by adding paragraph (b) to read as follows:

§ 890.904 Determination of FEHB benefit payment.

* * * * *

(b) The FEHB plan's benefit payment for physician services under this subpart is determined by taking the lower of the following amounts:

(1) The amount determined by the FEHB plan, which is equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule for Medicare participating physicians and the Medicare Nonparticipating Physician Fee Schedule for Medicare nonparticipating physicians (the amount payable before the Medicare deductible and coinsurance are applied); or

(2) The actual billed charges; and

(3) Reducing the lower amount by any FEHB plan deductible, coinsurance, or copayment that is the responsibility of the retired enrolled individual.

7. Section 890.905 is revised to read as follows:

§ 890.905 Limits on inpatient hospital and physician charges.

(a) Hospitals may not collect from FEHB plans and retired enrolled individuals for inpatient hospital services more than the amount determined to be equivalent to the Medicare part A payment under the DRG-based PPS.

(b) Medicare participating providers may not collect for FEHB plans and retired enrolled individuals for physician services more than the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule.

(c) Medicare nonparticipating providers may not collect from FEHB plans and retired enrolled individuals for physician services more than the amount to be equivalent to the Medicare limiting charge amount.

8. Section 890.906 is redesignated as § 890.909 and a new § 890.906 is added to read as follows:

§ 890.906 Retired enrolled individuals coinsurance payments.

(a) A retired enrolled individual's coinsurance responsibility for inpatient hospital services is calculated in accordance with the plan's contractual benefit structure and is based on the amount determined to be equivalent to the Medicare part A payment under the DRG-based PPS.

(b) A retired enrolled individual's coinsurance responsibility for physician services is calculated in accordance with the plan's contractual benefit structure and is based on the lower of the actual charges or the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule for Medicare participating physicians and the Medicare Nonparticipating Physician Fee Schedule for Medicare nonparticipating physicians.

9. Section 890.907 is redesignated as § 890.910 and a new § 890.907 is added to read as follows:

§ 890.907 Effective dates.

(a) The limitation specified in this subpart applies to inpatient hospital admissions commencing on or after January 1, 1992.

(b) The limitation specified in this subpart applies to physician services supplied on or after January 1, 1995.

10. Section 890.908 is added to read as follows:

§ 890.908 Notification of HHS.

An FEHB plan, under the oversight of OPM, will notify the Secretary of HHS, or the Secretary's designee, if the plan finds that:

(a) A hospital knowingly and willfully collects, on a repeated basis, more than the amount determined to be equivalent to the Medicare part A payment under the DRG-based PPS.

(b) A Medicare participating physician or supplier knowingly and willfully collects, on a repeated basis, more than the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule.

(c) A Medicare nonparticipating physician or supplier knowingly and willfully charges, on a repeated basis, more than the amount determined to be equivalent to the Medicare limiting charge amount.

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DEPARTMENT OF AGRICULTURE**Federal Crop Insurance Corporation****7 CFR Part 404****RIN 0563-AB13****Noninsured Crop Disaster Assistance Program****AGENCY:** Federal Crop Insurance Corporation.**ACTION:** Interim rule.

SUMMARY: The Federal Crop Insurance Corporation ("FCIC") hereby adds a new part 404 to chapter IV of title 7 of the Code of Federal Regulations ("CFR"). The intended effect of this interim rule is to provide a noninsured crop disaster assistance program ("NAP") to protect producers of crops for which insurance is not available. NAP provides a level of protection in most respects comparable to the catastrophic risk protection plan of insurance offered to producers on certain crops.

DATES: This rule is effective January 1, 1995. Written comments, data, and opinions on this rule will be accepted until close of business July 17, 1995 and will be considered when the rule is to be made final.

ADDRESSES: Written comments, data, and opinion on this interim rule should be sent to Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, D.C. 20250. Hand or messenger delivery may be made to Suite 500, 2101 L Street, N.W., Washington D.C. Written comments will be available for public inspection and copying in the Office of the Manager, 2101 L Street, N.W., 5th Floor, Washington, D.C., during regular business hours, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the Regulatory Impact Analysis to the Noninsured Crop Disaster Assistance Program, contact Diana Moslak, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254-8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture ("USDA") procedures established by Executive Order 12866 and Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 2000.

This rule has been determined to be "significant" for the purposes of

Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget ("OMB").

A Regulatory Impact Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that crop insurance reform is expected to result in net positive benefits to producers, taxpayers, and society. The impact on individual producers compared to payments under ad hoc disaster programs depends primarily on the farm's actual yield or yield assigned by the FCIC, market prices, and any adjustments for variable marketing or production costs. However, reform is expected to result in less volatility of producers' incomes and decrease the risk of no income due to adverse weather events. Rural communities and farmers will benefit from the advanced knowledge that payments will be made in times of catastrophic yield losses. The Government and taxpayers will benefit from a single disaster protection program and consequently reduced Federal outlays. Although producers will have an added burden to make application and report yields and acreage, the benefits in terms of greater risk protection and reduced potential for program fraud or abuse outweigh the costs.

The provisions set forth in this interim rule will contain information collections that require clearance by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Due to the necessity of implementing the rule immediately, the agency has requested clearance of this information collection from OMB. The public reporting burden for the information collections that would be required for compliance with these regulations is estimated to average 42 minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Comments on the information collection may be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, NEOB, Washington, D.C. 20503. Attention: Desk Officer for USDA.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of

power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. Most producers will be able to certify to their historical production levels at the time of application based on existing records, or they may elect to base their initial coverage on transitional or assigned yields. The amount of data collected from applicants will only be that needed to establish an acceptable yield, and determine the number of acres planted, and eligibility of the producer, crop and acreage. The information required and time of collection is statutory. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. § 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. Before any judicial action may be brought regarding the provisions of this regulation, the National Appeal Division administrative appeal procedures must be exhausted. The provisions of this rule are to be given retroactive effect to January 1, 1995.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This interim rule implements programs mandated by the amendments to the Federal Crop Insurance Act by the Federal Crop Insurance Reform Act of 1994. Those amendments required that the statutory changes be implemented for the 1995 crop year. Many of the final planting dates or risk periods for crops for which insurance is not available have passed or will soon pass. Planting decisions for 1995 crops have been or will shortly be made and it is necessary that producers, lenders, and suppliers know the parameters and requirements of the program. Disasters in 1995 subject

to the Act may have occurred. Therefore, it is impractical and contrary to the public interest to publish this rule for notice and comment prior to making the rule effective. However, comments are solicited for 60 days after the date of publication in the **Federal Register** and will be considered by FCIC before this rule is made final.

On October 13, 1994, the amendments to the Federal Crop Insurance Act, made by the Federal Crop Insurance Reform Act of 1994, were effective. This regulation will provide the provisions to carry out the noninsured crop disaster assistance program requirements of the Reform Act. The Noninsured Crop Disaster Assistance Program will replace the provisions of the Disaster Payment Program (7 CFR part 1477) and the provisions of the Tree Assistance Program (7 CFR part 1478). By separate rule, the Consolidated Farm Service Agency ("CFSA") will amend these regulations to restrict the crop years of application to those prior to the crop year for which this rule will be effective and later remove those parts.

Background

Upon publication of 7 CFR part 404, this regulation will provide noninsured crop disaster assistance through the USDA and will replace ad hoc disaster assistance. The provisions of the noninsured crop disaster assistance program are as follows:

1. Section 404.9, paragraph (a)—Provides that producers who are eligible to receive NAP payments for crop years 1995 through 1998 will receive coverage against a covered loss greater than fifty percent (50%) of the approved yield for the eligible crop payable at sixty percent (60%) of the average market price for the crop.

2. Section 404.9, paragraph (b)—Provides that producers who are eligible to receive NAP payments after crop year 1998 will receive coverage against a covered loss greater than fifty percent (50%) of the approved yield for the eligible crop payable at fifty-five percent (55%) of the average market price for the crop.

3. Section 404.11, paragraph (a)—Specifies that eligible crops will be commercial crops or other agricultural commodities (except livestock), grown for food or fiber and will also include floricultural, ornamental nursery, Christmas tree crops, turfgrass sod, industrial crops, and aquacultural species.

4. Section 404.13—Specifies the minimum "area" of 320,000 acres or a geographical area with a minimum average value of at least \$80 million for all crops produced annually.

5. Section 404.13, paragraph (d)—Allows for an area determination to be ten or more producers of the crop in those eligible areas outside the United States.

6. Section 404.15—Provides that yields will be established by the FCIC for the purposes of providing NAP payments. Yields may be established by using the actual production history of the producer over a prescribed period, or if there is inadequate documentation to calculate the actual production history, generally in accordance with 7 CFR part 400, subpart G. The FCIC will ensure that the NAP payments accurately reflect significant yield variations due to different farming practices, such as between irrigated and non-irrigated acreage.

7. Section 404.15, paragraph (h)—Specifies that producers with contracts for guaranteed payments for production will have their harvested production adjusted upward to reflect the amount of the contract payment.

8. Section 404.15, paragraph (i)—A producer who produces a crop in a county where the acreage of the crop for the county has increased by more than 100 percent over any year in the preceding seven years may not use an assigned yield unless:

(a) The planted acreage of the producer for the crop has been inspected prior to the loss by a third party acceptable to the FCIC; or

(b) The CFSA County Executive Director and the CFSA State Executive Director recommend an exemption to FCIC for approval. FCIC will limit use of assigned yields to one loss year.

9. Section 404.17—Provides for the filing of an annual acreage report by the producer for each eligible crop at the local office to be eligible for NAP payments. For each year, producers must report their current year's acreage and the previous year's crop production history.

10. Section 404.19, paragraphs (a) and (b)—Specifies that to qualify for NAP payments, any loss or prevented planting of the eligible crop must be due to drought, flood, or other natural disaster, as determined by the Secretary. NAP payments will not cover losses due to neglect or malfeasance of the producer, or the failure of the producer to reseed or replant to the same crop in those areas and under such circumstances where it is customary to reseed or replant, or the failure of the producer to follow good farming practices.

11. Section 404.19, paragraph (c)—Specifies that a producer of an eligible crop will not receive NAP payments for loss in production or prevented planting

unless the projected average or actual yield for the crop in an area falls below 65 percent of the expected area yield established by FCIC. Once the area eligibility requirement has been satisfied, the total quantity of the eligible crop that the producer is able to harvest on the unit must be less than 50 percent of the approved yield. FCIC will make a payment for the difference between the determined yield and 50 percent of the producer's approved yield. Once the area eligibility requirement has been met, a producer of an eligible crop may receive NAP payments for prevented planting if the producer is prevented from planting more than 35 percent of the acreage. Intended acreage may be verified using records of historical acreage planted to the eligible crop.

12. Section 404.21, paragraph (a)—Provides for notice of damage or loss at the local office within 15 calendar days after the occurrence of the prevented planting or damage to the crop to be eligible for NAP payments. With the exception for the 1995 crop year, in which case, the notice must be filed within the later of 45 days after this rule is published in the **Federal Register** or 15 days after the occurrence of the prevented planting or damage to the crop.

13. Section 404.21, paragraph (b)—Requires the producer to make an application for payment at the local office before the deadline set by FCIC.

14. Section 404.23—Specifies that if the producer is eligible to receive NAP payments and is also eligible to receive benefits for the same loss under other USDA programs, the producer must elect the program from which to receive benefits.

15. Section 404.25—Specifies that the total amount of payments that a person may receive annually under this title will not exceed \$100,000. A producer with qualifying gross revenues of \$2 million or more may not receive NAP payments.

16. Section 404.27—Specifies that if a producer conceals or misrepresents any material fact, commits fraud, or participates in a scheme or device, the producer will not be eligible to receive any payments applicable to that crop year and could be subject to penalties specified in the Act.

List of Subjects in 7 CFR Part 404

Agricultural commodities, Disaster assistance, Reporting and recordkeeping requirements.

Interim Rule

For the reasons set out in the preamble, a new part 404 is added to

chapter IV of title 7 of the CFR, to read as follows:

**PART 404—NONINSURED CROP
DISASTER ASSISTANCE PROGRAM—
REGULATIONS FOR THE 1995 AND
SUCCEEDING CROP YEARS**

Sec.

- 404.1 General statement.
- 404.3 Applicability.
- 404.5 Administration.
- 404.7 Definitions.
- 404.9 Coverage.
- 404.11 Eligibility.
- 404.13 Area.
- 404.15 Yield determinations.
- 404.17 Acreage report.
- 404.19 Loss requirements.
- 404.21 Application for payment and notice of loss.
- 404.23 Multiple benefits.
- 404.25 Payment and income limitations.
- 404.27 Misrepresentation, scheme and device, and fraud.
- 404.29 Refunds to the corporation.
- 404.31 Cumulative liability.
- 404.33 Appeals.
- 404.35 Exemption from levy.
- 404.37 Estates, trusts, and minors.
- 404.39 Death, incompetence, or disappearance.
- 404.41 OMB control numbers.

Authority: 7 U.S.C. 1506(l).

§ 404.1 General statement.

The Federal Crop Insurance Act, as amended by the Federal Crop Insurance Reform Act of 1994 (the "Act"), requires the Federal Crop Insurance Corporation (FCIC) to implement a noninsured crop disaster assistance program (NAP) to provide eligible producers of eligible crops with protection somewhat comparable to the catastrophic risk protection plan of insurance. NAP is designed to help reduce production risks faced by producers of uninsurable crops. NAP will reduce financial losses that occur when natural disasters cause a loss of production or prevented planting of an eligible crop. Payment eligibility is based on an expected yield for the area and an approved yield for an individual producer unit based on actual production history or a transitional yield, if sufficient actual production records are not available. Production for both the applicable area expected yield and the individual producer approved yield for the unit must fall below specified percentages in order to be eligible for payments under this part.

§ 404.3 Applicability.

The provisions contained in this part are applicable to each eligible producer and each eligible crop and acreage for which catastrophic risk protection coverage is not otherwise available.

§ 404.5 Administration.

(a) The NAP program will be administered under the general supervision of the FCIC, and will be carried out through state and county committees and offices of the CFSA, or other local USDA offices if designated by FCIC.

(b) The state CFSA committee will, in accordance with this part, recommend the geographical size and shape of the area where a natural disaster has occurred, and whether the area eligibility requirement has been satisfied. The recommendation of eligibility will be submitted to FCIC for review and approval or disapproval.

(c) FCIC will determine all yields and prices under this part.

(d) No delegation herein to a state or county CFSA committee will preclude the FCIC Manager from determining any question arising under NAP or from reversing or modifying any determination made by a state or county CFSA committee.

§ 404.7 Definitions.

(a) *Actual production history.* Refer to 7 CFR part 400, subpart G, except that the terms of subpart G will read as follows when referring to NAP:

Insurance terms	NAP terms
Agent	Local office representative.
Claim	Application for payment.
Claim for indemnity ...	Application for payment.
Indemnity payment	NAP payment.
Insurable acreage	Eligible acreage.
Insurable cause	Natural disaster.
Insurable crop	Eligible crop.
Insurance company ...	Provider.
Insurance purposes ..	NAP purposes.
Insured	Eligible producer.
Insured producer	Eligible producer.
Uninsurable acreage ..	Ineligible acreage.
Uninsurable production.	Ineligible production.
Uninsured cause of loss appraisal.	Assigned production.
Uninsured production	Ineligible production.

(b) *Actual yield.* The yield per acre for a crop year calculated from production records or NAP payments in accordance with 7 CFR part 400, subpart G.

(c) *Adjusted yield.* The transitional yield reduced by the applicable percentage for lack of adequate records in accordance with 7 CFR part 400, subpart G.

(d) *Approved yield.* A yield calculated and approved by the verifier, used to determine any NAP payment in accordance with 7 CFR part 400, subpart G.

(e) *Aquacultural species.* Any species of aquatic organism grown as food for

human consumption or fish raised as feed for fish that are consumed by humans, and which is propagated and reared in an aquatic medium by a commercial operator on private property in water in a controlled environment.

(f) *Area.* The geographic region recommended by the state CFSA committee, and approved by FCIC in accordance with § 404.13 of this part, where a natural disaster has occurred which may qualify producers in the geographic area for NAP payments.

(g) *Assigned yield.* A yield assigned for a crop year in the base period if the producer does not file an acceptable production report by the production reporting date in accordance with 7 CFR part 400, subpart G. Assigned yields are used in the same manner as actual yields when calculating APH. An assigned yield may not be used for a production report in a disaster year.

(h) *Average market price.* The price or dollar equivalent on an appropriate basis; i.e., bushel, ton, etc., for an eligible crop established by FCIC for determining NAP payments. Such price will be on a harvested basis without the inclusion of transportation, storage, processing, packing, marketing or other post-harvest expenses and will be based, in part, on historical data.

(i) *CCC.* The Commodity Credit Corporation.

(j) *CFSA.* The Consolidated Farm Service Agency of the United States Department of Agriculture.

(k) *County expected yield.* The eligible crop yield established by FCIC for the county. Such yield information may be obtained from the National Agricultural Statistics Service (NASS), CSREES, credible nongovernmental studies, and yields in similar areas. For planted annual crops, such yield will be based on the acreage planted for harvest.

(l) *Crop year.* The period of time within which the crop is normally grown and designated by the calendar year in which the crop is normally harvested in the area.

(m) *CSREES.* The Cooperative State Research, Education, and Extension Service.

(n) *Eligible crop.* An agricultural commodity including all types and varieties or acreage of a commodity for which insurance is not available under any FCIC insurance program and which is commercially produced for food or fiber as specified in this part. Eligible crop shall also include floricultural, ornamental nursery, Christmas tree, turfgrass sod, industrial crops, and aquacultural species. In the case of a crop that historically has multiple plantings in the same crop year that are planted or are prevented from being

planted on the same or different acreage will be considered different crops for determining NAP payments. This does not apply to a replacement crop.

(o) *Expected area yield.* The eligible crop yield established and approved by FCIC for the geographic area.

(p) *FCIC.* The Federal Crop Insurance Corporation, a wholly owned Government Corporation within the Consolidated Farm Service Agency, United States Department of Agriculture.

(q) *Good farming practices.* The cultural practices generally used in the area for the crop to make normal progress toward maturity and produce at least the individual unit approved yield. The practices are normally those recognized by CSREES as compatible with agronomic and weather conditions in the area.

(r) *Harvested.* A single harvest crop is considered harvested when the producer has, by hand or mechanically, removed the crop from the field. A multiple harvest crop is considered harvested when the producer has, by hand or mechanically, removed at least one harvesting from the field. The crop is considered harvested once it is taken off the field and placed in a truck or other conveyance. (Exceptions: Hay is considered harvested when in the bale, whether removed from the field or not. Grazing is not considered harvesting except for seeded pasture.)

(s) *Livestock.* Any farm or other animal excluding aquacultural species and, including but not limited to domestic avian, ruminant, equine, and swine species grown or maintained for any purpose.

(t) *Local office.* The CFSA office or other USDA office designated by FCIC.

(u) *Master yields.* Approved APH yields, for certain crops and counties as designated by the FCIC, used to determine any NAP payment in accordance with 7 CFR part 400, subpart G.

(v) *Natural disaster.* Means damaging weather, including but not limited to drought, hail, flood, excessive moisture, freeze, tornado, hurricane, or excessive wind, or any combination thereof; or other adverse natural occurrence, including but not limited to earthquake, volcanic eruption, heat, locust infestation; or that directly causes, accelerates, or exacerbates the destruction or deterioration of an eligible crop.

(w) *Operator.* The person who is in general control of the farming operation on the farm during the crop year.

(x) *Person.* A person as defined in 7 CFR part 1497, subpart B.

(y) *Prevented planting.* The inability to plant a crop with proper equipment during the planting period for the crop or commodity. A producer must have been unable to plant the eligible crop due to a natural disaster that prevented most producers in the surrounding area from planting such crop during the same planting period. The natural disaster that caused the prevented planting may occur prior to the planting period for the crop in the area, but must not occur earlier than the planting period for such crop the prior crop year.

(z) *Producer.* A person who, as owner, landlord, tenant, or sharecropper, is entitled to share in the production from the eligible commodity or in the proceeds thereof.

(aa) *Production report.* A written record showing the commodity's annual production and used to determine the producer's yield for NAP purposes. The report contains yield history by unit, if applicable, including planted acreage for annual crops, eligible acreage for perennial crops, and harvested and appraised production for the previous crop years. This report must be supported by verifiable written records, measurement of farm-stored production, or by other records of production approved by FCIC on an individual basis. Information contained in an application for payment is considered a production report for the unit for the crop year for which the application was filed.

(bb) *Qualifying gross revenues* means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income for the calendar year from such operations; and

(2) With respect to a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the person's total gross income from all sources.

(cc) *Reseeded or replanted crop.* The same crop planted on the same acreage after the first planting of the crop has failed.

(dd) *Replacement crop.* A different crop planted on the same acreage after the failure of the first crop, excluding reseeded or replanted crops.

(ee) *Seeded pasture.* Acreage which is seeded on cropland, as defined in 7 CFR part 719, to an annual crop intended for use as grazing only by domestic animals.

(ff) *Share.* The producer's percentage of interest in the eligible crop as an owner, operator, or tenant at the beginning of the crop year. For the purposes of determining eligibility for

NAP payments, the producer's share will not exceed the producer's share at the earlier of the time of loss or the beginning of harvest. Acreage or interest attributed to a spouse, child, or member of the same household may be considered part of the producer's share unless considered a separate person.

(gg) *Transitional NAP yield ("T" Yield).* An estimated yield based on the county expected yield adjusted for individual producers as determined by FCIC. The T-yield will be used in the approved yield calculation process when less than four consecutive crop years of actual or assigned yields are available.

(hh) *Unit.* For the noninsured crop disaster assistance program, all acreage of the eligible crop in the county on the date coverage begins for the crop year:

(1) In which the person has one-hundred percent (100%) crop share; or

(2) Which is owned by one person and operated by another person on a share basis.

(Example: If, in addition to the land the person owns, the person rents land from five landlords, three on a crop share basis and two on a cash basis, the person would be entitled to four units, one unit for each crop share lease and one unit which includes the two cash leases and the land owned by the person.) Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land will be considered as owned by the lessee. No unit other than that stated herein will be permitted.

§ 404.9 Coverage.

(a) Producers who are eligible to receive NAP payments for crop years 1995 through 1998 will receive coverage against loss in yield greater than fifty percent (50%) of the producer's approved yield for the eligible crop payable at sixty percent (60%) of the established average market price for the crop.

(b) Producers who are eligible to receive NAP payments after crop year 1998 will receive coverage against loss in yield greater than fifty percent (50%) of the producer's approved yield for the eligible crop payable at fifty-five percent (55%) of the established average market price for the crop.

(c) FCIC will adjust the NAP payment rate for crops that are produced with significant and variable expenses that are not incurred because the crop acreage was prevented from being planted or planted but not harvested.

(d) NAP payments will be determined by unit based on the production of all acreage of that crop (planted and eligible prevented from being planted) in the unit.

(e) Each producer's NAP payment will be based on the producer's share of the eligible crop.

§ 404.11 Eligibility.

(a) Eligible crops under this part will be any commercial agricultural crop, commodity, or acreage of a commodity grown for food or fiber for which the catastrophic risk protection plan of insurance is not available in the area under 7 CFR part 402 unless excluded in paragraph (b) of this section. All types and varieties of a crop or commodity will be treated as a single eligible crop. NAP benefits will be made available for:

- (1) Any commercial crop grown for human consumption;
- (2) Any commercial crop planted and grown for livestock consumption, including but not limited to grain and forage crops and seeded pasture;
- (3) Any commercial crop grown for fiber, excluding trees grown for wood, paper, or pulp products;
- (4) Any commercially produced aquacultural species;
- (5) Floriculture;
- (6) Ornamental nursery crops;
- (7) Christmas trees;
- (8) Turfgrass sod; and
- (9) Industrial crops.

(b) NAP payments will not be available for:

- (1) Losses of livestock or their by-products;
 - (2) Any person who has qualifying gross revenues in excess of \$2 million;
 - (3) Any acreage in any area for any crop for which the catastrophic risk protection plan of insurance under 7 CFR part 402 is available or would have been available had the crop been timely planted in accordance with 7 CFR part 402 unless the delay in planting was caused by a natural disaster;
 - (4) Any person who has violated chapter XII and section 1764 of the Food Security Act of 1985 by being convicted under Federal or state law of planting, cultivating, growing, producing, harvesting or storing a controlled substance in any crop year;
 - (5) Producing an agricultural commodity in any crop year on a field on which highly erodible land is predominant, unless the person is exempt under the provisions of § 12.5 of this title; or
 - (6) Producing an agricultural commodity in any crop year on converted wetland, unless the person is exempt under the provisions of § 12.5 of this title.
- (c) Any tenant, landlord, or producer on the unit separate from the person determined to be ineligible under this provision will remain eligible for NAP

payments for their share of the crop unless such tenant, landlord, or producer on the unit is:

- (1) Also convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance;
- (2) Also in violation of chapter XII of the Food Security Act of 1985 and the regulations issued thereunder; or
- (3) Otherwise determined by FCIC to be ineligible for NAP payments.

§ 404.13 Area.

For the purposes of this part, all acreage affected by a natural disaster, or any adjustment thereto, will be included in the area recommended by the state CFSA committee and submitted to FCIC for approval, regardless of whether the commodity produced on the affected acreage suffered a loss. The minimum area will be 320,000 acres or a geographical area with not less than an \$80 million average value for all crops produced annually. The minimum area will be determined as follows:

(a) The shape of the area will be contiguous and will correspond to the shape of the natural disaster to the maximum extent possible. If the acreage affected by the natural disaster is less than the number of acres needed to meet the area size requirement and does not meet the \$80 million value requirement, the state CFSA committee will add acres equally from all surrounding cropland including undamaged acres until the minimum size is met.

(b) If the acreage affected by the natural disaster is not contiguous:

(1) The area will include all acreage that has been affected by the same natural disaster within the area.

(2) The acreage included in the area will be contiguous taking into consideration geological breaks (identifiable variations in topography such as mountain ranges and rivers).

(3) If the distance between affected acreages is so distant that it is not practical to include all of the acreage within the area, the acreage may be divided into separate areas.

(c) The area may not be defined in any manner that arbitrarily includes or excludes producers or cropland.

(d) In lieu of paragraphs (a) and (b) of this section, for eligible areas outside the United States, the area shall include ten or more producers of the crop.

(e) If a part of a contiguous unit is affected by a disaster, the whole contiguous unit will need not be included in the determination of the area. However, the whole unit will be used to determine if the producer suffered a loss.

§ 404.15 Yield determinations.

(a) FCIC will establish expected area yields for eligible crops for each county or area for which the NAP is available, using available information, which may include, but is not limited to, NASS data, CSREES records, credible nongovernment studies, yields in similar areas, and reported APH data.

(b) FCIC may make county yield adjustments taking into consideration different yield variations due to different farming practices in the county such as irrigated and nonirrigated acreage.

(c) In establishing expected area yields for eligible crops:

(1) If the approved area corresponds to a single county, the expected area yield will be the yield established by FCIC for that county, including any adjustments permitted by this section;

(2) If the approved area encompasses portions of or more than one county, the expected area yield will be the weighted average of the yields established by FCIC for those counties in the area, including any adjustments permitted by this section.

(3) FCIC may adjust expected area yields if:

(A) The cultural practices, including the age of the planting or plantings, are different from those used to establish the yield.

(B) The expected area yield established on a state or county level is determined to be incorrect for the area.

(d) FCIC will establish approved yields for purposes of providing assistance under this part. Approved yields for the eligible crop will be based on the producer's actual production history in accordance with the provisions of 7 CFR part 400, subpart G.

(e) The approved yield established for the producer for the year in which the NAP payments are offered will be equal to the average of the consecutive crop year yields reported and certified of that producer for that eligible crop.

(f) If a producer receives an assigned yield for a year of natural disaster, the producer will be ineligible to receive an assigned yield for any subsequent year disaster unless adequate production records for the eligible crop from the previous one or more years are provided to the local office. The producer shall receive a zero yield for those years the producer is ineligible to receive an assigned yield.

(g) FCIC will select certain producers and require those selected to provide adequate records to support the information provided. Producers may also be required to support the yield certification at the time of loss adjustment or on post-audit. Each

certification must be supported by adequate records. Failure to produce adequate records may subject the producer to criminal and civil false claims actions under various Federal statutes as well as refund of any amount received. In addition, sanctions as set out at 7 CFR part 400, subpart R may be imposed for false certification. Adequate records may include:

(1) Commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries if the eligible crop was sold or otherwise disposed of through commercial channels; and

(2) Such documentary evidence as is necessary in order to verify the information provided by the producer if the eligible crop has been sold, fed to livestock, or otherwise disposed of other than through commercial channels such as contemporaneous measurements, truck scale tickets, contemporaneous diaries, etc.

(h) Any producer who has a contract to receive a guaranteed payment for production, as opposed to delivery, of an eligible crop will have the production adjusted upward by the amount of the production corresponding to the amount of the contract payment received.

(i)(1) Producers will not be eligible to receive an assigned yield if the acreage of the crop in a county for the crop year has increased by more than 100 percent over any year in the preceding seven crop years, unless:

(i) The producer provides adequate records of production costs, acres planted, and yield for the crop year for which benefits are being sought.

(ii) If FCIC determines that the records provided under this paragraph are inadequate, FCIC may require proof that the eligible crop could have been marketed at a reasonable price had the crop been harvested.

(2) The provisions of paragraph (i)(1) of this section will not apply if:

(i) The crop has been inspected prior to the occurrence of a loss by a third party acceptable to FCIC; or

(ii) The CFSA County Executive Director, with concurrence of the CFSA State Director, makes a recommendation for an exemption from the requirements and such recommendation is approved by FCIC.

§ 404.17 Acreage report.

(a) Producers must file one or more acreage reports annually at the local office no later than the date specified by the Corporation for each crop the producer will want made eligible for the NAP program. The acreage report may be filed by the farm operator. Any producer will be bound by the acreage

report filed by the farm operator unless the producer files a separate acreage report prior to the acreage reporting date.

(b) That acreage report must include:

(1) All acreage in the county of the eligible crop (for each planting in the event of multiple planting) in which the producer has a share;

(2) The producer's share at the time of planting or the beginning of the crop year;

(3) The CFSA farm serial numbers;

(4) The crop and practice;

(5) All persons sharing in the crop (the identity of any person having a substantial beneficial interest in the crop (refer to 7 CFR part 400, subpart Q) and the person's employer identification number or social security number);

(6) The date the crop was planted;

(7) Acreage prevented from being planted; and

(8) Production from the previous crop year. (For example: The producer reported the crop acreage planted in 1995. The producer must then report the 1995 production for that acreage by the 1996 acreage reporting date for the crop.)

(c) A person's failure to submit the required information by the designated acreage reporting dates shall result in the denial of NAP payments. If there is a change of ownership, operation, or share within the farming operation after the acreage reporting date, the local office must be notified not later than thirty calendar days after the change and proof of the change must be provided in order to maintain eligibility for payments under this part.

§ 404.19 Loss requirements.

(a) To qualify for payment under this part, the loss or prevented planting of the eligible crop must be due to drought, flood, or other natural disaster as determined by the Secretary.

(b) NAP assistance will not cover losses due to:

(1) The neglect or malfeasance of the producer;

(2) The failure of the producer to reseed or replant to the same crop in the county where it is customary to reseed or replant;

(3) The failure of the producer to follow good farming practices for the commodity and practice;

(4) Water contained or released by any governmental, public, or private dam or reservoir project;

(5) Failure or breakdown of irrigation equipment or facilities; or

(6) Except for tree crops and perennials, inadequate irrigation resources at the beginning of the crop year.

(c) A producer of an eligible crop will not receive NAP payments unless the projected average or actual yield for the crop, or an equivalent measurement if yield information is not available, in the area falls below sixty-five percent (65%) of the expected area yield. Once this area eligibility requirement has been satisfied:

(1) A reduced yield NAP payment will be made to a producer if the total quantity of the eligible crop that the producer is able to harvest on the unit is less than fifty percent (50%) of the individual unit approved yield for the crop, factored for the share of the producer for the crop. Production from the entire unit will be used to determine the individual loss. The quantity will not be reduced for any quality consideration unless a zero value is established.

(2) A prevented planting NAP payment will be made if the producer is prevented from planting more than thirty-five percent (35%) of the total eligible acreage intended for planting to the eligible crop.

(A) Eligible crop acreage will not exceed 100% of the simple average of the number of acres planted to the crop by the producer in the loss area during the years used to determine the approved yield, unless FCIC has previously agreed in writing to approve acreage exceeding this limit.

(B) The percentage of the acreage that is prevented from being planted will be determined by dividing the producer's prevented planted acreage within the loss area by the producer's total acreage intended to be planted in the loss area. The acreage intended to be planted may be verified using records of historical acreage.

(C) For the purposes of determining eligible acreage for prevented planting payment, all eligible acreage of the crop within the loss area will be reduced by the number of acres of the crop planted within the loss area. In the event one or more crops are eligible for a prevented planting payment in the same crop year, and there is acreage planted to another crop in excess of such crop eligible acreage, such excess acreage will be prorated to the crops eligible for prevented planting on the basis of such crop's eligible acreages.

(D) NAP payments for prevented planting will not be available for:

(i) tree crops and other perennials;

(ii) land which planting history or conservation plans indicate would remain fallow for crop rotation purposes;

(iii) land used for conservation purposes or intended to be or considered to have been left unplanted

under any program administered by USDA; or

(iv) land planted with a replacement crop.

§ 404.21 Application for payment and notice of loss.

(a) Any person with a share in the eligible crop who would be entitled to a NAP payment must make application and provide a notice of damage or loss within 15 calendar days after the occurrence of the prevented planting (the end of the planting period) or damage to the crop. For the 1995 crop year only, the notice must be filed within the later of 45 days after this rule is published in the **Federal Register** or 15 days after the occurrence of the prevented planting or damage to the crop. The notice must be filed at the local office serving the area where the producer's unit is located. The farm operator may provide the notice for all producers with an interest in the crop. All producers on a farm will be bound by the operator's filing or failure to file the application for payment unless the individual producers elect to timely file their notice.

(b) Applications for NAP payments must be filed on our form by the applicant with the local office no later than the application deadline.

(1) If the producer chooses not to harvest the crop, all eligible acres and crop units for which the producer intends to make an application for payment must be left intact until the units have been appraised or released by a FCIC loss adjuster.

(2) If the producer harvests the crop, the producer must provide such documentary evidence of crop production as FCIC may require which may include leaving representative samples of the crop for inspection.

(c) Failure to make timely application or to supply the required documentary evidence shall result in the denial of NAP payments.

(d) Benefits under this part may be assigned by the eligible producer only on our form and such assignment is effective only when approved by FCIC. Failure of FCIC to make payment in accordance with such assignment will not give rise to any liability on the part of FCIC to the assignee.

§ 404.23 Multiple benefits.

(a) If a producer is eligible to receive NAP payments under this part and benefits under any other program administered by the Secretary for the same crop loss, the producer must choose whether to receive the other program benefits or NAP payments. The producer is not eligible for both. Such

election does not relieve the producer from the requirements of making a production and acreage report.

(b) Applicable programs include, but are not limited to, the Emergency Livestock Feed Assistance Program and any other program determined by FCIC to compensate the producer for the same crop loss.

§ 404.25 Payment and income limitations.

NAP payments made to eligible producers are subject to the following provisions:

(a) For the purpose of making such payments, the term "producer" will be considered to mean the term "person" as determined in accordance with 7 CFR part 1497, subpart B.

(b) No person shall receive payments under this part in excess of \$100,000.

(c) A person who has qualifying gross revenues in excess of \$2 million for the previous calendar year shall not be eligible to receive NAP payments under this part.

(d) Simple interest on payments to the producer which are delayed will be computed on the net payments ultimately found to be due, from and including the 61st day after the latter of the date the producer signs, dates, and submits a properly completed application for payment on the designated form, the date disputed applications are adjudicated, or the date the area trigger is established for NAP payments. Interest will be paid unless the reason for failure to timely pay is due to the producer's failure to provide information or other material necessary for the computation or payment. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year and may vary with each publication.

§ 404.27 Misrepresentation, scheme and device, and fraud.

(a) If FCIC determines that any producer has erroneously represented any fact or has adopted, participated in, or benefited from, any scheme or device that has the effect of defeating, or is designed to defeat the purpose of this part, such producer will not be eligible to receive any payments applicable to the crop year for which the scheme or device was adopted.

(b) If any misrepresentation, scheme or device, or practice has been employed for the purpose of causing FCIC to make a payment which FCIC otherwise would not make under this part:

(1) FCIC will withhold all or part of the payment that would otherwise be due.

(2) All amounts paid by FCIC to any such producer, applicable to the crop year in which the offense occurred, must be refunded to FCIC together with interest and other amounts as determined in accordance with this part.

(3) FCIC may impose such other penalties as authorized by section 506(n) of the Federal Crop Insurance Act, as amended or available under 7 CFR part 400, subpart R.

(c) Scheme and device may include, but is not limited to:

(1) Concealing any information having a bearing on the application of the rules of this part;

(2) Submitting false information to the FCIC or any county or state CFSA committee; or

(3) Creating fictitious entities for the purpose of concealing the interest of a person in the farming operation.

§ 404.29 Refunds to the corporation.

(a) In the event that there is a failure to comply with any term, requirement, or condition for payment made in accordance with this part, or the payment was established as a result of erroneous information provided by any person, or was erroneously computed, all such payments or overpayments will be refunded to FCIC on demand, together with interest.

(b) Interest will accrue in accordance with the provisions of 7 CFR 1403.9.

(c) Interest on any amount due the FCIC found to have been received by the producer as a result of fraud, misrepresentation, scheme or device, or presenting a false application for payment will start on the date the producer received the payment.

(d) Recovery of delinquent debts and set off will be in accordance with 7 CFR part 1403.

(e) If FCIC determines it is necessary to contract with a collection agency or to employ an attorney to assist in collection, the producer will pay all the expenses of collection.

(f) All amounts paid will be applied first to the payment of expense of collection, second to the reduction of any penalties which may have been assessed, then to the reduction of accrued interest, then to the reduction of the principal balance.

§ 404.31 Cumulative liability.

(a) The liability of any producer for any payment or refunds, which is determined in accordance with this part to be due to FCIC, will be in addition to any other liability of such producer

under any civil or criminal fraud statute or any other statute or provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 1014, and 31 U.S.C. 3729.

(b) All producers receiving payments under this part will be jointly and severally liable to repay any unearned NAP payments.

§ 404.33 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except the designation of an area for which there is no appeal rights because it is determined a rule of general applicability, must be in accordance with part 780 of this title or the regulations promulgated by the National Appeals Division, whichever is applicable.

§ 404.35 Exemption from levy.

Any payment that is due any person under this part will be made without regard to questions of title under state law and without regard to any attachment, levy, garnishment, or any other legal process against the crop, and the proceeds thereof, which may be asserted by any creditor, except statutory liens of the United States.

§ 404.37 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible will be eligible for NAP payments under this part only if such person meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 404.39 Death, incompetence, or disappearance.

In the case of death, incompetence or disappearance, of any person who is eligible to receive NAP payments in accordance with this part, such payments will be disbursed in accordance with part 707 of this title.

§ 404.41 OMB control numbers.

The provisions set forth in this interim rule contain information collection that require clearance by the Office of Management and Budget

("OMB") under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Previous information collection requirements have been approved under OMB control numbers 0560-0004, 0563-0007, 0563-0016, and 0563-0036. The new information collection requirements have been submitted to OMB for approval under OMB control number 0563-0016 and are not effective until approved by OMB.

Done in Washington, DC, on May 15, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 245, and 248

[INS No. 1688-95]

RIN 1115-AD89

Waiver of the Two-Year Home Country Physical Presence Requirement for Certain Foreign Medical Graduates

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by allowing certain foreign medical graduates who entered the United States in J-1 status, or who acquired J-1 status after arrival in the United States, to obtain a waiver of the 2-year home country residence and physical presence requirement under section 212(e)(iii) of the Immigration and Nationality Act (Act) pursuant to a request by a State Department of Public Health, or its equivalent. The waiver is intended to permit these foreign medical graduates to work at a health care facility in an area designated by the Secretary, Health and Human Services (HHS), as having a shortage of health care professionals ("HHS-designated shortage area"). This interim rule also contains provisions which will permit these foreign medical graduates to change their nonimmigrant status in the United States from J-1 exchange visitor to H-1B specialty occupation worker.

DATES: This interim rule is effective May 18, 1995. Written comments must be received on or before July 17, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions

Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1688-95 on your correspondence. Comments are available for public inspection at this location by calling (202) 514-3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Sophia Cox, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION:

Background

Under section 212(e) of the Act, certain J-1 exchange visitors (and their J-2 dependent spouse and children) are subject to a 2-year home country residence and physical presence requirement (the "2-year requirement"). Exchange visitors (and dependents) who are subject to this requirement must reside and be physically present in their country of nationality or last residence abroad ("home" country) for an aggregate of at least 2 years following departure from the United States. J-1/J-2 exchange visitors who are subject to the 2-year requirement are not allowed to change their nonimmigrant status to, or be admitted to the United States under the H (temporary worker or trainee) or L (intracompany transferee) nonimmigrant categories, or acquire lawful permanent resident status, unless they have complied with this requirement or have been granted a waiver thereof.

The following categories of exchange visitors (and their accompanying spouse and children in dependent J-2 status) are subject to the 2-year requirement: (a) Those whose J-1 program was financed in whole or in part by an agency of the U.S. Government, or by the government of their "home" country; (b) those whose field of specialized knowledge or skill, as indicated on Form IAP-66 (Certificate of Eligibility), is required in their home country; and (c) those who entered the United States in J-1 status (or who acquired J-1 status subsequent to arrival in the United States) to receive graduate medical education or training.

Under section 212(e) of the Act, a waiver of the 2-year requirement may be granted by the Service upon the favorable recommendation of the Director of the United States Information Agency (USIA). Waivers can be obtained on the basis of: (a) Exceptional hardship to the applicant's U.S. citizen or permanent resident